

IN THE CIRCUIT COURT OF WETZEL COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

MARKWEST LIBERTY MIDSTREAM
& RESOURCES, L.L.C.,
Plaintiff,

v.

CIVIL ACTION NO. 16-C-82
JUDGE H. CHARLES CARL, III

J.F. ALLEN COMPANY;
AMEC FOSTER WHEELER
ENVIRONMENT & INFRASTRUCTURE, INC.; and
REDSTONE INTERNATIONAL, INC.;
Defendants¹,

BENCH TRIAL ORDER
DAY FIFTEEN: OCTOBER 9, 2020

1. On the 9th day of October, 2020, this matter came on before the Court for a bench trial. By prior agreement of the parties, the Court conducted the bench trial in Hampshire County, West Virginia. The Plaintiff was present by its counsel Kevin L. Colosimo, Joseph M. Ward, and Jonathan G. Brill, and its in-house counsel Natalie Lien. Defendant J.F. Allen Company was present by its counsel Douglas C. LaSota and Nicole L. Carnevale and by its President, Greg Hadjis. Defendant Amec Foster Wheeler Environment & Infrastructure, Inc. was present by its counsel Vic L. McConnell and by its Lead Engineer Chris Ramsey. Defendant Redstone International, Inc. was present by its counsel Bruce E. Stanley and Michael A. Jacks.

2. The Court inquired as to whether counsel had any objections to the Day Order from yesterday. Counsel had no objections and the Court then entered the Order.

3. Thereafter, Mr. Ward called Mr. Bolyard to the stand and his cross examination continued.

¹ The remaining Defendants were dismissed, by agreement of the parties, prior to the bench trial.

4. Thereafter, Mr. LaSota continued his cross examination of Mr. Bolyard.
5. Thereafter, Mr. Bolyard was subject to re-cross examination by Mr. McConnell.
6. Thereafter, Mr. Stanley reserved further questioning so that Amec's witness could

be taken out of turn.

7. Thereafter, Mr. Bolyard was dismissed as a witness, subject to re-call.
8. Thereafter, Mr. Jacks moved for admission into evidence of the following

Exhibits:

Redstone: 2a-3, 2a-27, 2a-35, 2a-37, 2a-42, (Exhibits to the Deposition of Bryan Leatherman) **19A-1, 19A-6, 19A-7** (Exhibits to Tyler Adams' deposition); **20a-17** (Exhibits to the Deposition of Dan Rowlands); **25** (Deposition Transcript of Dr. Bruce); **41** (2019 Supplemental Bolyard Report); **41a** (Exhibits to the Supplemental Bolyard Report); **41b; 42** (Collin Report); **43** (2019 Supplemental Collin Report); **44** (Bruce Report); **45** (2020 Supplemental Bruce Report); **46** (Slide Show Presentation of Mr. Bolyard); **46a** (Rebuttal Slide Show Presentation of Mr. Bolyard); **47** (Slide Show Presentation of Dr. Collin); and **48** (Slide Show Presentation of Dr. Bruce).

J.F. Allen: 7 (JFA Instructions to Bid); **9** (Lane Instructions to Bid); **20** (Possible Lane Shutdown); **31** (2/7/15 Daily), **47** (8/25/15 Daily); **112** (MarkWest JF Allen C1/O Log); **114** (MarkWest Internal 1.4); **116** (CEC Response); **121** (Lien Vendor Agreement); **148** (11/29/14 Test Location Change); **190a** (8/15/16 Summary of Redstone Intel Payments, updated version of Exhibit 190); and **204** (7/15/14 Mobley Wall Pre-Bid Meeting Minutes).

Amec and J.F. Allen had no objection to the admission of the exhibits. MarkWest objected to Redstone Exhibit 25 and the Court heard argument from Mr. Colosimo, Mr. Jacks, and Mr. Stanley, which is more fully set forth on the record. The Court overruled the objection as to the portions of the deposition transcript that were read into the record and where page and line numbers were cited. MarkWest further objected to the admission of exhibits relied upon by Mr. Bolyard in preparing his Report, and the Court heard argument from Mr. Colosimo, Mr. Jacks, and Mr. Stanley, which is more fully set forth on the record. The Court overruled the objection.

9. Thereafter, Mr. McConnell moved for admission into evidence of **Amec Exhibit 279** (Figure 42 from Mr. Bolyard's Report), without objection.

10. Thereafter, Mr. LaSota moved for admission into evidence of **J.F. Allen Exhibit 240** (Undated Photograph of the Top of the Wall), without objection.

11. Thereafter, Mr. Colosimo moved for admission into evidence of **MarkWest Exhibit 286** (Dr. Bruce's Affidavit and the Motion to Strike); and **287** (NOAA Weather Data, of which the Court previously took judicial notice), without objection.

12. Thereafter, J.F. Allen made a Motion for judgment as a matter of law pursuant to Rule 52(c), Judgment on Partial Findings, of the West Virginia Rules of Civil Procedure. Mr. LaSota agreed to defer argument on the Motion until after Redstone concludes its case in chief.

13. Thereafter, the Court recessed for a brief break.

14. Thereafter, Mr. McConnell called Dr. Paul Sabatini to the stand and he was duly sworn and subject to direct examination. Following qualification questions, the Court recognized Dr. Sabatini as an Expert in Civil Geotechnical Engineering and Geotechnical Engineering with an Emphasis on Design and Construction of Earth Retaining Systems, without objection. Thereafter, Dr. Sabatini primarily presented narrative testimony, pursuant to agreement of counsel, with some questioning by Mr. McConnell.

15. Thereafter, the Court recessed for a lunch break.

16. Following the lunch break, the testimony of Dr. Sabatini resumed.

17. During the direct examination of Dr. Sabatini, MarkWest made a Motion to Strike Slides 149 and 150. The Court heard argument from Mr. Colosimo and Mr. McConnell, which is more fully set forth on the record, and GRANTED the Motion to Strike.

18. Thereafter, the testimony of Dr. Sabatini resumed.

19. Following direct examination, Mr. McConnell moved for admission into evidence of the following Exhibits: Amec 262 (Berkel testing data); 263 (Geosyntec Reports); and 280 (Slide Show Presentation of Dr. Sabatini, with the redaction as set forth on the record).

20. Thereafter, Dr. Sabatini was subject to cross examination by Mr. Colosimo.

21. Thereafter, the Court recessed for a brief break.

22. Thereafter, the cross examination of Dr. Sabatini continued.

23. Thereafter, Dr. Sabatini was subject to cross examination by Mr. LaSota.

24. Thereafter, Dr. Sabatini was subject to cross examination by Mr. Jacks.

25. Thereafter, Dr. Sabatini was dismissed as a witness and is not subject to recall.

26. At 5:22 p.m. the proceedings adjourned for the day. The Court and counsel agreed to start testimony at 8:30 a.m. on Wednesday, October 14, 2020.

It is **ORDERED**:

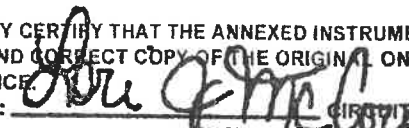
❖ The Circuit Clerk shall send this Order to all counsel of record.

❖ The Court notes the objections and exception of the parties to any adverse findings or rulings herein.

ENTERED this 14th day of October, 2020.




H. CHARLES CARL, III, JUDGE
BUSINESS COURT DIVISION

I HEREBY CERTIFY THAT THE ANNEXED INSTRUMENT IS A
TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN
MY OFFICE.
ATTEST: 
CIRCUIT CLERK
WETZEL CO. WEST VIRGINIA
DEPUTY CLERK